

BEFORE THE
SURFACE TRANSPORTATION BOARD

218719

Ex Parte No. 646 (Sub-No. 1)
RAIL RATE CHALLENGES IN SMALL CASES

**POST-HEARING SUPPLEMENTAL COMMENTS OF
CARGILL, INC.**

Cargill, Inc. ("Cargill") submits these supplemental comments in response to statements made by Vice Chairman Buttrey toward the close of the Board's January 31, 2007 hearing. Specifically, the Vice Chairman asked whether the Board has improperly focused its attention in this proceeding on "small cases" instead of "small shippers." Cargill contends that the Board properly has focused its attention upon small cases, both as a matter of law and policy.

Congress directed the Board "to establish a simplified and expedited method for determining the reasonableness of challenged rail rates *in those cases* in which a full stand-alone cost presentation is too costly, *given the value of the case.*" 49 U.S.C. § 10701(d)(3) [emphasis added]. The statutory language explicitly states that Congress' focus was on cases, not shippers. Cargill understood the Board to have recognized this fact at page 35 of the July 28, 2006 decision in this proceeding, where the Board noted that "under the statute eligibility must be based on the value of the case." No justification was given at the January 31 hearing to revisit this issue.

In his comments, Vice Chairman Buttrey suggested that large shippers, such as Cargill, may not need regulatory rate protection because of their size and resources. But, he did not explain how the relative size and resources of a captive shipper prevent a market dominant

railroad from exercising its market power over that shipper. Although large shippers may have greater resources than smaller shippers to afford a full stand-alone cost ("SAC") presentation, if the value of their cases do not justify that expense, neither the large nor the small shipper would incur that expense. The statute clearly entitles both of them to use the small case standards, without regard to their relative resources.

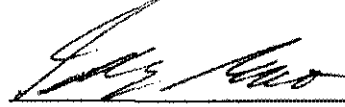
Cargill simply cannot generate the consistently large volumes of traffic over a long time period that would justify the multi-million dollar cost of a SAC presentation. Consequently, *the value of a rate case* for Cargill, even at extremely high R/VC ratios, seldom if ever will justify the cost of bringing a SAC case.

Furthermore, Cargill's size relative to any Class I railroad does not give it any advantage over a smaller shipper. Because Cargill must reach many of its customers by rail, or not at all, a market dominant railroad can inflict substantial economic harm and inefficiencies upon Cargill by reason of unreasonably high rates. Such behavior, which attempts to transfer the captive shipper's profits to the railroad, is an inefficient and improper transfer of wealth that regulation is intended to prevent. In addition, it allows the market-dominant railroad, rather than the competitive marketplace, to determine which customers Cargill can serve and by what means, which distorts the free market's more efficient allocation of resources.

Cargill's very ability to transact business with a customer is dependent on a market dominant railroad, but in no case can Cargill have a similar influence upon any Class I railroad. In addition, both small and large captive shippers are subject to the same competitive abuses, and if either wants to reach their customers, they most often must do so by the market dominant railroad or not at all. By denying Cargill access to the small case procedures simply because it is

a large shipper, the Board would deny Cargill access to *any* form of regulatory rate protection on its captive traffic. This clearly is not what Congress intended.

Respectfully submitted,



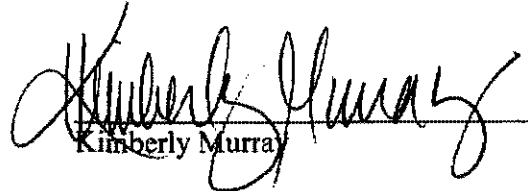
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February 26, 2007

CERTIFICATE OF SERVICE

I hereby certify that I have on this 26th day of February, 2007, served a copy of the foregoing Comments on all parties of record, by first class mail, postage prepaid.


Kimberly Murray